

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of: )  
)  
OFFICE OF FEDERAL CONTRACT ) Case No. 2017-OFC-08004  
COMPLIANCE PROGRAMS, UNITED )  
STATES, DEPARTMENT OF LABOR, )  
)  
Plaintiff, )  
)  
vs. )  
)  
GOOGLE, INCORPORATED, )  
)  
Defendant. )

PROCEEDINGS TELEPHONICALLY HELD

Wednesday,  
January 5, 2017

90 Seventh Street  
Suite 4-800  
San Francisco, California

The above-entitled matter came on for prehearing  
conference, pursuant to notice, at 11:04 o'clock a.m.

BEFORE: THE HONORABLE STEVEN BERLIN,  
Administrative Law Judge

## APPEARANCES:

On behalf of the Plaintiff:

MARC A. PILOTIN, ESQ.

IAN ELIASOPH, ESQ.

JEREMIAH MILLER, ESQ.

United States Department of Labor

90 Seventh Street, Suite 3-700

San Francisco, California 94103

On behalf of the Defendant:

LISA BARNETT SWEEN, ESQ.

MATTHEW CAMARDELLA, ESQ.

ANTONIO RAIMUNDO, ESQ.

DANIEL DUFF, ESQ.

Jackson Lewis

50 California Street, 9th Floor

San Francisco, California 94104

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WITNESSES:DIRECTCROSSREDIRECTRECROSSALJ

(None called.)

EXHIBITS:IDENTIFIEDRECEIVEDREJECTEDPLAINTIFF

(None marked, nor received.)

DEFENDANT

(None marked, nor received.)

ADMINISTRATIVE LAW JUDGE

(None marked, nor received.)

P R O C E E D I N G S

(11:04 o'clock a.m.)

JUDGE BERLIN: This prehearing conference is going to be on the record. So, this is OFCCP versus Google, Inc., 2017-OFC-4 and why don't I take the appearance of counsel to get started?

MR. PILOTIN: Good morning, Your Honor. On behalf of OFCCP, Marc Pilotin, Ian Eliasoph, and Jeremiah Miller.

JUDGE BERLIN: Good morning,

MS. SWEEN: Good morning, Your Honor. On behalf of Google, you have Lisa Sween, Matt Camadella, and Antonio Raimundo -- oh, and Dan Duff, as well.

JUDGE BERLIN: Good morning.

All right. And Mr. Pilotin and Ms. Sween, will you be the people I'll be hearing from this morning?

MR. PILOTIN: Yes, Your Honor.

MS. SWEEN: That's correct.

JUDGE BERLIN: All right, very good.

So I have a list of quite a few things that I want to go over in preparation for the hearing on Friday. Let me ask first for the Defense, just logistically, do you know where our office is and how to get here?

MS. SWEEN: We do, Your Honor.

JUDGE BERLIN: Okay. So we're on the Fourth Floor in the Annex of the Federal Building and I'll look forward to

1 seeing you at 9:00. And I'll look forward to seeing the  
2 Plaintiff's, as well.

3 So, let me -- before I do anything else -- just  
4 describe for you very generally the procedure that I expect  
5 to follow at the hearing. So, I will, after I take your  
6 appearances, confirm with each of you the witnesses who you  
7 expect to call during your case in chief.

8 I'll then ask you to submit exhibits for the record  
9 -- all of your exhibits. I'll take the Plaintiff's Exhibits  
10 first, after the Joint Exhibits. I'm assuming there will be  
11 no objection to the Joint Exhibits. Is that correct?

12 MS. SWEEN: That's correct, Your Honor.

13 MR. PILOTIN: That's correct, Your Honor.

14 JUDGE BERLIN: All right. So, I'm right now  
15 admitting the Joint Exhibits. And I'll take the Plaintiff's  
16 Exhibits first, ask the Defense if they have objections to  
17 any of those exhibits. I will most likely rule on any  
18 objections right then, although it's possible to take it  
19 under submission to await some testimony about an exhibit.  
20 But generally I rule on the objections immediately. So when  
21 I complete that and have admitted whichever Plaintiff  
22 Exhibits I'm admitting, I will ask the Defendant for its  
23 exhibits and go through the same process. Which means that  
24 by the time we start hearing from the first witness, most  
25 likely everyone will know what all of the admitted exhibits

1 are. And we won't need to have any further testimony and end  
2 up getting exhibits admitted.

3 Let me ask right now whether either party  
4 anticipates any objections based on identification of the  
5 exhibit or its authenticity?

6 MS. SWEEN: Not that we're aware of right now, Your  
7 Honor.

8 JUDGE BERLIN: Mr. Pilotin?

9 MR. PILOTIN: The same, Your Honor, not that we're  
10 aware of right now.

11 JUDGE BERLIN: Okay. Under our rules, any  
12 objection as to authenticity is due on file seven days before  
13 the hearing. Given the very expedited procedure for this and  
14 that the exhibits were exchanged only so recently, I will  
15 give the parties until 2:00 tomorrow afternoon to file in  
16 writing any objection based on identification or authenticity  
17 of an exhibit. If there's no written objection filed by 2:00  
18 tomorrow afternoon by fax and served on the opposing party,  
19 then any objections on those grounds are waived.

20 And please bear in mind that under the expedited  
21 procedures, we will not be following any formal Rules of  
22 Evidence. So, as a general matter, I will overrule hearsay  
23 objections unless the circumstances really raise some genuine  
24 questions about the trustworthiness of the evidence. And,  
25 you know, I'm not going to talk about other potential

1 exhibits -- I'm sorry, other potential objections, but just  
2 bear that in mind.

3           Objections to the form of questioning are certainly  
4 allowed. I do sustain from time to time objections based on  
5 questions being leading. This isn't a jury case, so, you  
6 know, bear that in mind, as well.

7           I urge Counsel, you know, when you're leading on  
8 preliminary matters, obviously that's fine. When questions  
9 of the evidence is really not in question, leading questions  
10 are fine. But if we come to something that is disputed, if  
11 you lead, I might give less weight to the answer than if you  
12 don't. So, just bear that in mind. Even if there's no  
13 objection and the answer comes in, you might do better not to  
14 lead on questions like that, especially when you're relying  
15 on the expertise of the witness, because in that event, I  
16 want to hear from the expert and not from the attorney about  
17 what the evidence should be.

18           In any event, I will turn first to the Plaintiffs,  
19 to hear the Plaintiffs' witnesses and their case in chief.

20           I left out opening statements, I didn't mean to do  
21 that. I will ask each side if they'd like to make an opening  
22 statement. Please limit opening statements to a discussion  
23 of what you anticipate the evidence will show. Then I'll  
24 take the witness testimony for the cases in chief, first the  
25 Plaintiff and then the Defendant.

1 I want to talk more about a rebuttal case, but I  
2 will allow a rebuttal case, so long as it actually is  
3 rebuttal. And generally I discourage closing arguments, but  
4 given this expedited procedure, we will be working soon on  
5 the decision, soon enough that we will be able to remember, I  
6 hope, what attorneys say in closing argument. And, you know,  
7 under the rules, I'll be waiting for anyone to file a brief  
8 who wants to. I mean, I'll be watching for it, but I will  
9 not hold up a decision to await briefs. So that would be  
10 another reason for closing argument. So, this is to say that  
11 although I usually discourage closing argument, for this  
12 particular case, I will invite closing arguments and you're  
13 free to make any appropriate close that you think is  
14 warranted.

15 MS. SWEEN: Your Honor, this is Lisa Sween. Can I  
16 ask a question?

17 JUDGE BERLIN: Please.

18 MS. SWEEN: Okay. So, just going back to the  
19 direction with respect to proceeding with a case in chief  
20 first, I just want to make sure I'm clear on how you like to  
21 run your courtroom. So Plaintiffs are going to put on their  
22 witnesses and we'll have an opportunity to cross-examine  
23 them. You would like us to then wait to put on our case in  
24 chief, even if it involves the same witnesses, is that  
25 correct?

1 JUDGE BERLIN: I'm really glad you asked that,  
2 because there could be adverse witnesses. They're certainly  
3 listed by OFCCP, is that right?

4 No, I'm sorry. You have listed -- Defense has  
5 listed adverse witnesses.

6 MS. SWEEN: Correct.

7 JUDGE BERLIN: I don't recall -- but I guess -- so  
8 you might be calling, for example, Ms. Wipper in your case as  
9 an adverse witness.

10 So, in the event any party anticipates calling an  
11 adverse witness and the witness is earlier called by the  
12 other party, I will allow the party who is going to offer the  
13 testimony as an adverse witness to choose whether they prefer  
14 to examine the witness as part of cross-examination right  
15 then or whether they prefer to call the witness separately  
16 during their case in chief. So either way.

17 MS. SWEEN: And are we able to make that decision  
18 on a witness-by-witness incident or do we need to make that  
19 decision with respect to all witnesses and stick with that  
20 same decision?

21 JUDGE BERLIN: No, this should be a relatively  
22 short hearing and I'll allow the -- each party to make that  
23 decision with respect to each witness.

24 MS. SWEEN: Thank you.

25 JUDGE BERLIN: Okay.

1 MR. PILOTIN: Now, Your Honor, if I may, I have  
2 also a follow-up question regarding some of the stuff you  
3 mentioned already.

4 JUDGE BERLIN: Yes, please.

5 MR. PILOTIN: On the closing argument and the  
6 briefing, is it one or the other or may the parties do both,  
7 have a closing argument and submit briefing?

8 JUDGE BERLIN: You may do both.

9 MR. PILOTIN: Okay. Thank you, Your Honor.

10 And would it be possible to set a deadline for the  
11 closing briefs by which both parties would submit briefs for  
12 the Court?

13 JUDGE BERLIN: No, because I won't wait at all.  
14 So, that's what the regulations say. So my decision is due  
15 out 15 days after the conclusion of the hearing and any brief  
16 that comes in, I will consider. And if my decision is ready  
17 before the brief has arrived and the brief comes in  
18 afterward, it will not be considered. So, you know, you run  
19 the risk.

20 I am probably not going to do much work on a  
21 decision until the transcript is available. I've asked the  
22 court reporter to have transcripts available no later than  
23 close of business -- assuming we finish Friday, which, of  
24 course, we won't know until the end of the day Friday -- but  
25 if we finish Friday, the 7th, then the court reporter has

1 agreed to have transcripts available by email by close of  
2 business on Wednesday, the 12th. So, I'm not likely to do  
3 any substantial work on the decision before Thursday, the  
4 13th, and I very much doubt that I'm going to get it written,  
5 you know, on Thursday and Friday and complete. So, there's a  
6 little -- if my help is helpful in getting an idea of when  
7 you might want to have one of your briefs on file.

8 MR. PILOTIN: Understood, Your Honor. Thank you.

9 JUDGE BERLIN: Okay. Let me ask, for OFCCP, do you  
10 plan to have an Agency representative at counsel table during  
11 the hearing?

12 MR. PILOTIN: We do, Your Honor.

13 JUDGE BERLIN: And who is that going to be?

14 MR. PILOTIN: It will be the Regional Director,  
15 Regional Director Wipper.

16 JUDGE BERLIN: All right. And for Google, do you  
17 plan to have a corporate representative present?

18 MS. SWEEN: We do, Your Honor, Amy Lambert, who's  
19 with Google Legal Department.

20 JUDGE BERLIN: Very good, okay.

21 And I do exclude and sequester witnesses who have  
22 not yet testified on the request of either party. So, does  
23 either party wish to invoke that rule?

24 MR. PILOTIN: OFCCP does, Your Honor.

25 JUDGE BERLIN: All right. So please bear in mind

1 that if you have witnesses, they will have to wait outside  
2 until after they've testified and I ask both parties to make  
3 that that happens with their witnesses. If it doesn't  
4 happen, there's a possibility their witness will be excluded.

5 MS. SWEEN: And just for clarity, because I didn't  
6 respond, Google intends to invoke that, as well.

7 JUDGE BERLIN: Okay. One party would be enough,  
8 but I'm glad that the two of you agree.

9 MR. PILOTIN: And just to be clear for the record,  
10 Your Honor, we do understand that Regional Director Wipper  
11 will be there as the corporate -- or, not the corporate  
12 representative. However, she will be testifying, so we don't  
13 anticipate that to be an issue.

14 JUDGE BERLIN: Yes, and she might be called  
15 separately as an adverse witness after she's heard from other  
16 witnesses who have testified and that's fine, because the  
17 Agency can have a representative of their choice, just as  
18 Google can, as well. And, you know, I don't anticipate that  
19 Ms. Lambert will testify.

20 Am I right, she's not on the witness list?

21 MS. SWEEN: That's correct, Your Honor.

22 JUDGE BERLIN: But if, you know, something comes up  
23 by rebuttal or whatever and she's called to testify, she will  
24 have heard all of the testimony, as well. So each side gets  
25 one person in the courtroom.

1 All right. So any questions remaining about this  
2 whole -- the process and what the hearing will look like?

3 MS. SWEEN: Your Honor, I do have a couple  
4 procedural questions. I don't know if it's appropriate to  
5 raise them now or not. If you want to put them over until  
6 the end of the call, I'm happy to, but maybe I can just tell  
7 me what they are and you can let me know what your preference  
8 is.

9 JUDGE BERLIN: Sure.

10 MS. SWEEN: A few things. One, Google does intend  
11 to use demonstrative Excel spreadsheets at the hearing by use  
12 of a computer screen. We will have a trial tech team that's  
13 helping us with that. We just wanted to make sure that the  
14 Court was aware of that and if there's any issue that the  
15 Court has with that.

16 JUDGE BERLIN: Any objections to that, Mr. Pilotin?

17 MR. PILOTIN: No, we don't have any objection to  
18 the use of demonstrative, but we would request some  
19 disclosure of the demonstrative in advance of their  
20 presentation to determine whether there should be any sort of  
21 objection.

22 MS. SWEEN: These are simply Excels that have  
23 already been produced to OFCCP, Your Honor, so it's not  
24 demonstrative, per se, as compared to just what has actually  
25 been produced to OFCCP in the compliance.

1 MR. PILOTIN: If that's the case, Your Honor, then  
2 we have no objection.

3 JUDGE BERLIN: All right. So, Ms. Sween, this is a  
4 very rudimentary courtroom. And, you know, if you think of a  
5 moot court courtroom at a law school, it might be something  
6 like that. You know, a bench, tables and chairs. Not much  
7 past that.

8 So, whatever equipment you need to show your  
9 evidence, you need to bring that equipment and set it up. If  
10 you would like to be here Thursday, tomorrow, some time -- or  
11 your technical people to set that up, I'll arrange to allow  
12 for that. I don't think the courtroom is being used  
13 tomorrow. So, I'll check just to make sure.

14 The alternative would be for them to come on Friday  
15 morning. I don't know how long that will take them. So, you  
16 know, the office typically opens at 8:00 and they could come  
17 in at that time if they're confident that they'll be done in  
18 no more than about 55 minutes, that's fine. Otherwise, it's  
19 probably better to do it on Thursday.

20 Let me also say again, since there is no jury, if  
21 it's an Excel spreadsheet that is of a kind that would fit on  
22 a piece of paper, there's really no problem with your just  
23 handing me and Mr. Pilotin a copy of the printed Excel  
24 spreadsheet. I will look at it and, you know, I'm -- some  
25 times things that appear on a screen can be helpful, but as

1 long as we're all looking at the same thing, you know, suit  
2 yourself in this regard. But it's not required to have a lot  
3 of time to have equipment set up if it can be done with  
4 printed paper. So I'll leave that to you.

5 MS. SWEEN: Okay. I have a few more questions.

6 JUDGE BERLIN: Yes?

7 MS. SWEEN: Does the Court plan to entertain any  
8 motions in limine after -- before opening statements?

9 JUDGE BERLIN: Probably not. If there's an issue,  
10 you might want to bring it up today at this conference and  
11 maybe we can -- I'll either rule on it or we'll get some  
12 resolution on it. Or, at least, Mr. Pilotin and the OFCCP's  
13 team can have some time to think about it and then maybe  
14 we'll pick it up again at the hearing.

15 So, is that possible? Can you let me know during  
16 the conference today what those would be?

17 MS. SWEEN: So, Your Honor, Google does not plan on  
18 filing any motions in limine. Before Your Honor is the  
19 letter brief from OFCCP, which I don't know if Your Honor was  
20 planning on addressing today or at the conference and Jackson  
21 Lewis provided a response on April 4th.

22 JUDGE BERLIN: I have the letter and the response  
23 and I was planning that we would discuss that today.

24 MS. SWEEN: Okay. So, Google's not planning on  
25 filing any motions in limine and I guess I wanted to get a

1 sense from OFCCP whether they were planning to and, if so,  
2 the Court's perspective on entertaining those.

3 JUDGE BERLIN: Mr. Pilotin?

4 MR. PILOTIN: We don't have any additional motions  
5 in limine at this point, Your Honor. It's just the ones that  
6 we submitted the letter briefs on last week.

7 JUDGE BERLIN: All right. So, anything else you  
8 wanted to raise at the outset, Ms. Sween?

9 MS. SWEEN: I have one last question -- actually, I  
10 have two last questions, Your Honor. One is, I did look at  
11 the rules and it is -- the rules seem to suggest we do not  
12 need to subpoena OFCCP's witnesses that are on our exhibit  
13 list, because they are employees of OFCCP. However, I just  
14 want to make sure that we are doing what the Court would like  
15 us to do. We are happy to subpoena them if either Mr.  
16 Pilotin feels that's necessary -- obviously we would rather  
17 streamline the process, if possible, and if Mr. Pilotin is  
18 willing to produce those witnesses that are on our exhibit  
19 list without a subpoena, we can certainly do that, so long as  
20 everybody's in agreement on that.

21 JUDGE BERLIN: Well, I do want to go over OFCCP's  
22 views on whether these witnesses would need to be called.  
23 But assuming that they need to be there, then, Mr. Pilotin, I  
24 would ask OFCCP to produce them voluntarily.

25 MR. PILOTIN: And we agree to that, Your Honor. I

1 know when you have that as an issue teed up in the letter  
2 brief, but if they do need to appear, we will produce them  
3 voluntarily without a subpoena.

4 JUDGE BERLIN: Thank you.

5 All right. One of the questions I have after  
6 reviewing the papers on summary judgment, it appears that the  
7 materials that OFCCP is requesting deal with compensation.  
8 And is there anything else that forms a basis to argue that  
9 the materials sought are relevant, other than that they are  
10 relevant to compensation issues? Mr. Pilotin?

11 MR. PILOTIN: Yes, Your Honor. I mean, they --  
12 you're correct that they do address compensation issues. And  
13 that has been the Agency's position all along, kind of on  
14 their face.

15 The evidence at trial -- just to kind of give you a  
16 preview of what will be presented at the upcoming hearing --  
17 is that you're backing up just the general relevance of this  
18 material that's routinely requested in other types of  
19 compensation analyses, is that many of Google's own witnesses  
20 or, rather, Google's own managers refer to many of the  
21 factors for which OFCCP requested information.

22 So, you know, separate from them just on their face  
23 being generally relevant compensation practices, Google,  
24 itself, has admitted that many of the requested factors are  
25 relevant to compensation issues. And that's, in fact, why

1 many of them were requested.

2 JUDGE BERLIN: So one of the witnesses that's been  
3 identified, one of the things that that witness is going to  
4 talk about is applicant flow. And I don't see anything in  
5 the requested information on which OFCCP will assert that  
6 this is relevant to the investigation because it concerns  
7 applicant flow. Am I right?

8 MR. PILOTIN: That is my understanding, Your Honor.  
9 Our case is focused on requests that pertain to compensation.  
10 I understand that Google -- and this is one of the issues  
11 that we had raised -- identified a witness that, you know,  
12 speaks to the other part of this investigation, which does  
13 deal with applicant flow, but isn't relevant to the requests  
14 that are currently before the Court. So that was part of our  
15 concern as to why all of these witnesses, you know, were  
16 being called.

17 JUDGE BERLIN: Okay. Now, the Complaint says in  
18 seeking relief one of the things mentioned is debarment?

19 MR. PILOTIN: That is correct, Your Honor.

20 JUDGE BERLIN: Okay. And is OFCCP seeking  
21 debarment now, based on this proceeding or only in a later  
22 proceeding if I order Google to produce materials that they  
23 failed to produce?

24 MR. PILOTIN: That's correct, Your Honor. The  
25 debarment would be the sanction for the failure to comply

1 with your order.

2 JUDGE BERLIN: So the question, then, of Google's  
3 good faith is not really relevant for this proceeding. Am I  
4 right, Mr. Pilotin?

5 MR. PILOTIN: That is the Agency's position, Your  
6 Honor. This proceeding is focusing on whether or not, you  
7 know, these requests were produced or not and, you know,  
8 that's the primary issue.

9 Now, Google does have its defense, but we do not  
10 see good faith being relevant to this discussion. It's a  
11 binary issue at this point. Good faith, at most, along with,  
12 you know, the failure to comply with your order and, you  
13 know, enforcing --

14 JUDGE BERLIN: Well, Ms. Sween, for the purpose of  
15 this proceeding, Google does not need to prove good faith in  
16 order to involve debarment. Debarment is not even at issue  
17 in this proceeding. It could be in a subsequent proceeding  
18 if I order Google to produce something that's been requested  
19 and that order stands on appeal and Google fails to do it.  
20 But it is not presently -- debarment is not presently an  
21 issue.

22 So, did Google want to demonstrate good faith for  
23 some other reason that is relevant?

24 MS. SWEEN: Well, thank you, Your Honor. That  
25 explanation actually is very helpful to Google. Certainly

1 good faith would have been an affirmative defense to the  
2 Complaint, as pled. And so the facts that we have  
3 clarification now that that is a prospective sanction  
4 stemming from any proceedings in this matter and your order  
5 is helpful.

6 We have one witness that we were planning on  
7 putting on for the purpose of demonstrating good faith up to  
8 this point. And that witness will also testify, Your Honor,  
9 to the extent that Google has spent hundreds of thousands of  
10 dollars in responding to the request to date.

11 JUDGE BERLIN: Well, what I'm -- you know, that  
12 witness can testify about the expense of complying with  
13 OFCCP's requests, but it appears that it would be irrelevant  
14 to hear testimony to demonstrate good faith, because it  
15 simply is not at issue.

16 Does anyone have an argument why good faith is  
17 relevant or can we just exclude that? Mr. Pilotin?

18 MR. PILOTIN: We're fine with excluding that topic  
19 and streamlining this hearing, Your Honor.

20 JUDGE BERLIN: Ms. Sween?

21 MS. SWEEN: In light of the Court's assessment of  
22 that and Mr. Pilotin's representation, we're fine with  
23 excluding good faith at this proceeding.

24 JUDGE BERLIN: Okay. So, I notice in the  
25 Plaintiff's pretrial there's the possibility of recalling the

1 Regional Director -- I'm sorry, I'm not remembering Ms.  
2 Wipper's title.

3 MR. PILOTIN: Yes, Your Honor, she's the Regional  
4 Director.

5 JUDGE BERLIN: Of recalling her for rebuttal and  
6 also calling two additional witnesses, basically to talk  
7 about the burden of Google. I don't mean to, you know,  
8 oversimplify what you put in the pretrial and I don't mean  
9 to, in any way, restrict what those witness would testify  
10 beyond -- you know, they can testify to anything described in  
11 the pretrial.

12 But what I do want to talk about is my views on  
13 rebuttal. So, in my view, the party who carries the general  
14 burden in the case should present in its case in chief  
15 everything that addresses the issues that they understand to  
16 be in dispute. And that includes, in this case, the burden  
17 that there's been on Google.

18 So, if OFCCP has some evidence it wants to offer on  
19 that point, it should offer that as part of its case in  
20 chief. That's how I look at it.

21 It's also more efficient to get all of that out on  
22 the table and, you know, address it.

23 In addition, I'm not certain yet what ruling I'm  
24 going to reach on which party has the burden when it comes to  
25 -- I mean the burden of production and persuasion, not the

1 burden of work on gathering the evidence -- materials -- for  
2 OFCCP. But which party has the burden on the Fourth  
3 Amendment question. So, each side contends that the other  
4 side has the burden and each side has cited some authority,  
5 which I've reviewed. And I'm going to have to look more at  
6 the question. I'm not ready to rule on that now. So, it's  
7 possible that in a Fourth Amendment context the Government  
8 has the burden.

9 Certainly, on a warrant -- a search warrant, the  
10 Government has the burden of persuading the Magistrate of  
11 probable cause. But that's typically in an ex parte  
12 discussion, so there would be no one else there for the  
13 person being searched. But I'm not going to make any ruling  
14 on it. I'm just saying this is consistent with my view that  
15 OFCCP should put on its evidence about burden as part of its  
16 case in chief.

17 Now, that doesn't mean that OFCCP will not be  
18 allowed a rebuttal case, because having heard from Google on  
19 the subject OFCCP might want to offer further evidence. But  
20 I encourage OFCCP to put that initial case forward as part of  
21 their case in chief and not risk a ruling on rebuttal that  
22 they should have raised it before and that, therefore, it's  
23 excluded.

24 MR. PILOTIN: We appreciate the Court's  
25 encouragement, Your Honor, and we will go ahead in an attempt

1 to make things more efficient and streamlined and include  
2 that in our case in chief.

3 JUDGE BERLIN: Okay.

4 MR. PILOTIN: We will do that.

5 JUDGE BERLIN: So, Ms. Sween, I notice that one of  
6 Google's listed witnesses is Dr. Aamodt -- let me spell  
7 that -- A-a-m-o-d-t. Dr. Aamodt -- again, I'm just going to  
8 summarize. But he is going to be giving a statistical  
9 analysis on the employee compensation data and drawing some  
10 conclusions.

11 I'm not sure that that's actually going to be very  
12 helpful. Even if Google has an expert saying that what was  
13 already produced does not suggest discrimination and that,  
14 for example, the statistician has performed a multiple  
15 regression analysis that will explain any imbalance in the  
16 work force. That is not going to preclude OFCCP from getting  
17 the data so that they can reach their own conclusion on the  
18 subject. If there was ever a hearing on the merits of any  
19 alleged violation, of course, you know, we would definitely  
20 want to hear from Google's expert. But this is more in the  
21 nature of a subpoena enforcement proceeding and OFCCP, in my  
22 view, has the right to reach its own conclusions on the  
23 advice of its own experts.

24 So, no matter how convincing this expert might be  
25 about Google's -- that Google has not violated any of its

1 obligations, I don't think that would persuade me that OFCCP  
2 is not entitled to the materials.

3 So, I question if that witness is really needed.

4 MS. SWEEN: So, Your Honor, thank you. In  
5 preparing for the hearing, our expert is not going to be  
6 opining on the ultimate issues in the case. In other words,  
7 is there evidence of pay disparity. So, he's not going to be  
8 opining on whether or not there is or is not evidence of  
9 discrimination.

10 The purpose of Dr. Aamodt is he is -- he is a  
11 consultant who regularly assists both sides -- both  
12 plaintiffs and defendants -- in conducting pay disparity  
13 analysis and compensation reviews. And he is going to be put  
14 on for the purpose of demonstrating that OFCCP has absolutely  
15 everything it could possibly need at this point to do  
16 whatever regression analysis they want to do or need to do.  
17 And that the additional information that they requested will  
18 shed absolutely no light on any potential discrimination.  
19 Because what the OFCCP has asked for has absolutely no  
20 bearing on how Google sets compensation.

21 And so he will opine based on his experience in  
22 conducting -- again, for both sides -- numerous, hundreds of  
23 similar compensation reviews and after reviewing Google's  
24 policies, procedures, et cetera, that the information that is  
25 being requested is burdensome, because it will shed

1 absolutely no additional light on the ultimate issues in the  
2 case.

3 JUDGE BERLIN: Okay, I understand.

4 So, let me ask about another witness. One of the  
5 OFCCP employees that Google has listed as a witness is named  
6 Farha Haq -- and let me spell that for the record --  
7 F-a-r-h-a, like apple, last name H-a-q. So this person is a  
8 compliance officer I understand who was involved in issues  
9 concerning applicant flow data.

10 It appears that OFCCP will not be asserting that  
11 the materials they're seeking are relevant to their  
12 investigation because they concern applicant flow. And  
13 OFCCP's good faith efforts to comply are not relevant. So,  
14 I'm wondering if Google -- I'm sorry, Google's efforts to  
15 comply are not relevant.

16 So I'm wondering why we would want to hear from  
17 this witness.

18 MS. SWEEN: So, Your Honor, Ms. Haq -- I think  
19 that's how you pronounce the last name -- is being put on for  
20 a very limited purpose and we expect her to come on and off  
21 in, you know, less than 20 minutes. The limited purpose that  
22 we are putting her on for is to demonstrate to the Court that  
23 contrary to OFCCP's position that this is a typical  
24 compliance audit -- in other words, that the narrowing of the  
25 field and the narrowing of the scope is not required, Ms. Haq

1 in conducting the second track of this audit -- there's two  
2 tracks, the compensation track and the applicant track, we'll  
3 call it -- when she conducted the applicant track after  
4 receiving information from Google, she was able to narrow her  
5 focus into those categories of information that she felt she  
6 needed to look into further.

7 And that's all that Google's ever asked for in this  
8 case on the compensation side. And we want to be able to  
9 demonstrate to the Court that, in fact, not only can they,  
10 but they do narrow their focus when -- when they need  
11 additional information to help them make determinations.

12 JUDGE BERLIN: Okay. Well, let me just tell you as  
13 the Judge, you know, to me that kind of proof cuts both ways.  
14 Because it demonstrates that when OFCCP can narrow its focus,  
15 it does. So, I'm not really sure, you know, what useful  
16 inference is going to come from this. If applicant flow is  
17 no longer in the case, good faith is not in the case, the  
18 fact that OFCCP narrowed what it demanded with respect to  
19 applicant flow might prove too much and it doesn't look to me  
20 as though Ms. Haq would be a useful witness.

21 The OFCCP has not asked to call her to demonstrate  
22 how reasonable they are in narrowing the scope. I don't  
23 think this is a useful witness. How about not requiring them  
24 to bring this witness?

25 MS. SWEEN: So, Your Honor, I certainly appreciate

1 your perspective and we will take that under advisement in  
2 light of the fact -- and I know that we're all trying very  
3 hard to get this done in a day and we don't know right now  
4 whether we can. How about if I propose that we will talk to  
5 our client about it and be able to advise the Court first  
6 thing Friday morning whether she would need to be called?

7 JUDGE BERLIN: How about by 2:00 tomorrow? Because  
8 I believe she has to travel.

9 MR. PILOTIN: That is correct, Your Honor. Ms. Haq  
10 -- if I may, Ms. Haq is, you know, coming up from Los  
11 Angeles. So, the sooner we can know whether or not she'll be  
12 necessary, the better, and then she doesn't have to make the  
13 unnecessary travel.

14 MS. SWEEN: We can make that work, Your Honor.

15 JUDGE BERLIN: Thank you.

16 Now, with respect to the other OFCCP witnesses, we  
17 will be hearing from the District Director. I understand why  
18 Google, if it wanted to demonstrate good faith, would want to  
19 include the people at OFCCP who actually had been working on  
20 this project. But we're not looking at good faith. Do we  
21 really need the Assistant -- do we really need these two  
22 people who are actually working on it -- Ms. Huang and --  
23 that's H-u-a-n-g -- and Carolyn J.? I do not know -- I mean,  
24 part of her hyphenated name is mentioned, but I don't even --  
25 I do not know how to pronounce M-c-H-a-m. But whatever that

1 is, dash-Menhcyk. Can we not get the evidence that they  
2 would offer from Ms. Wipper? Ms. Sween?

3 MS. SWEEN: Yes. Your Honor, both of those  
4 witnesses are the boots on the ground people who are driving  
5 the process. They are the ones who are in charge of the  
6 compliance process on the ground. So their understanding of  
7 Google's compensation process, procedures, the factors that  
8 Google considers in making compensation determinations is  
9 crucial to determine whether or not the OFCCP has the correct  
10 understanding and, therefore, whether or not their additional  
11 demands and requests are, in fact, relevant.

12 If they don't have -- if these two witnesses who  
13 have been driving this process still don't have an  
14 understanding of what Google uses to set compensation and  
15 they continue to ask for information that has no bearing on  
16 that, I think that that would be helpful for the Court to  
17 understand with respect to whether or not their requests are,  
18 indeed, relevant.

19 JUDGE BERLIN: Mr. Pilotin?

20 MR. PILOTIN: Well, Your Honor, I mean with respect  
21 to the factors, I agree that I think Regional Director Wipper  
22 will be able to articulate what the Agency's understanding is  
23 as to the relevance of these materials. You know, Regional  
24 Director Wipper has an understanding as to what Google has  
25 represented to the relevance of the factors and in the event

1 that Google wants to contest the Agency's understanding, it  
2 can present its own witnesses to do that.

3 I don't understand, you know, what additional  
4 evidence calling two individuals from Los Angeles will add to  
5 that discussion. Ultimately, if Google disagrees with the  
6 Agency's understanding, it can present its witness to say the  
7 Agency has misunderstood.

8 JUDGE BERLIN: So, Ms. Sween, I think that -- first  
9 let me say that I view it as OFCCP's burden to demonstrate  
10 the -- that there is some relevance to the compensation issue  
11 of the data that they are seeking. And if they make no  
12 showing in that regard at all, I still have to be  
13 deferential, because I would most likely allow them the  
14 material unless it was plainly not related to compensation.

15 So, still, they are going to put on a witness that  
16 will talk about why these factors are relevant, according to  
17 what Mr. Pilotin just said.

18 I'm not sure, again, why Google would want to give  
19 them three chances to do that when they're satisfied to have  
20 one witness who, if she fails, she fails. It's their burden.  
21 And as long as any of them can explain the relevance, I'm  
22 going to be satisfied with that. So why give them three  
23 shots at it?

24 MS. SWEEN: Thank you, Your Honor. Two comments:  
25 One, Ms. Wipper has not participated, except from a very high

1 level, in this review. She was not at the on-site. Her name  
2 is not even on a majority of the correspondence. Ms. Huang  
3 is the one that sent the letter regarding the subject demand  
4 and Ms. -- now I'll have to pronounce her name correctly --  
5 McHam-Menchyk -- Carolyn -- served as the lead compensation  
6 interviewer. So, Google does feel strongly that we need at  
7 least -- I'll call her Ms. Carolyn, because I can't pronounce  
8 her last name yet -- as she is the primary person who has  
9 been leading this review and her understanding of the process  
10 is critical.

11 I simply don't think Ms. Wipper from the 30,000  
12 foot level that she's at can satisfy that.

13 JUDGE BERLIN: Okay. So why don't we, then --  
14 well, I take that to mean that Google can withdraw Ms. Huang  
15 as a witness?

16 MS. SWEEN: If that's your preference, Your Honor,  
17 we're happy to do that.

18 JUDGE BERLIN: All right. So, we're going to hear  
19 about Ms. Haq by 2:00 tomorrow. Carolyn -- whose last name  
20 I'm having great difficulty with and, hopefully, she will  
21 educate me on Friday -- is going to have to come to the  
22 hearing. And Ms. Huang is excused. All right. So that  
23 should -- that should address the issue about the witnesses  
24 for the hearing, Mr. Pilotin, your motion.

25 MR. PILOTIN: Yes. I think that deals with that

1 issue, Your Honor. I mean, one fine point on the matter, as  
2 well, is that in addition to Ms. Wipper testifying as to the  
3 relevance, we have also identified Ms. Suhr as the Deputy  
4 Regional Director as someone who will be able to testify as  
5 to statements that Google made during the on-site interview  
6 -- during the limited on-site interview. And she -- I don't  
7 think -- she was present. If Google's concern is that, as to  
8 what it's stating, she was present during those interviews.  
9 She is located here in San Francisco and she does not need to  
10 make the trip, unless, as I understand it, Ms. Menchyk has  
11 to.

12 JUDGE BERLIN: Who is this?

13 MR. PILOTIN: This is Deputy Regional Director Jane  
14 Suhr.

15 JUDGE BERLIN: Okay. And she was on your witness  
16 list as a potential rebuttal witness, anyway, right?

17 MR. PILOTIN: She was, Your Honor. We had split  
18 her -- you're correct, Your Honor. And one of the topics we  
19 did identify for Mr. Suhr was the issue regarding Google's  
20 statements during the compliance evaluation.

21 JUDGE BERLIN: You know, if we had a lot of  
22 discovery and depositions, Ms. Sween, it would be a lot  
23 different. But given that you didn't get to do those things,  
24 are you -- is it all the same to you if you question Ms.  
25 Suhr, who was at the same meetings as Carolyn, because it

1 will save the travel expense?

2 MS. SWEEN: Your Honor, that would not be our  
3 preference. Ms. Suhr was -- was involved in a very limited  
4 capacity and only at the on-site and Ms. Carolyn is a witness  
5 that Google feels strongly that we need for our case.

6 JUDGE BERLIN: Okay. Well, the order will stay as  
7 I stated it before.

8 I'm going to turn now to the request for admission  
9 and requests for admission are typically very valuable,  
10 because they do streamline the hearing by identifying issues  
11 that are really not in dispute.

12 Frankly, I have read the regulation about this  
13 request for admission -- these requests for admission more  
14 than once. And I find that incomprehensible, I regret to  
15 say. To say that you can serve requests for admissions 14  
16 days before the hearing and the responses are due 25 days  
17 later does not seem useful if the point is to narrow the  
18 issues for the hearing.

19 Have I read those regulations inaccurately? Can  
20 anyone help me out with these?

21 MS. SWEEN: I think you're reading of that is  
22 accurate, Your Honor.

23 MR. PILOTIN: The OFCCP agrees, Your Honor, that is  
24 what the regulation says.

25 JUDGE BERLIN: All right. But I do notice that the

1 parties agreed in Stipulation No. 31. That's something that  
2 addresses three or four of the requests for admission -- some  
3 of them, I don't think would help me much at all. For  
4 example, how much money Google spends on meals for its  
5 employees. You know, if Google has to do that to be  
6 competitive in the market to get the best people, that just  
7 shows what a tough life Google has that they have to spend so  
8 much money on food.

9 So, I don't know what it proves one way or the  
10 other. And -- but I'm not going to get into these on a  
11 one-by-one basis. The way the regulation reads, which makes  
12 no sense to me, does not require an answer until 11 days  
13 after the hearing is over on a case where I have to have a  
14 decision out within 15 days.

15 So, it might have worked to everyone's advantage if  
16 these could have been answered. The hearing's in two days.  
17 They haven't been answered. The answers are not due, so the  
18 requests for admission are stricken, as they were untimely  
19 propounded. That's my ruling on that.

20 All right. Let me just make sure -- Mr. Pilotin, I  
21 want to make sure and I think I understood from Ms. Sween,  
22 but I'll check with you, too. My understanding is that if I  
23 find that some of what is sought, OFCCP is entitled and some  
24 they are not entitled to, I may issue an order that orders  
25 what I conclude what OFCCP is entitled to and deny the rest.

1 I am not required to simply grant everything or deny  
2 everything.

3 And it seems to me that both parties agreed with  
4 that proposition in the briefs that I asked you to submit.  
5 But if you don't agree with that proposition, this would be  
6 the time to say so.

7 MS. SWEEN: Yes, Your Honor, we agree with that  
8 proposition. The Court has absolute discretion in blue  
9 penciling the requests and making a determination request-by-  
10 request as to which ones of them meet the relevant standard  
11 and the reasonableness standard and which ones do not.

12 JUDGE BERLIN: Mr. Pilotin?

13 MR. PILOTIN: Yes, Your Honor. In terms of your  
14 granting in part and denying in part the requests, we agree  
15 that that's something that the Court can do. I think the  
16 disagreement between the parties was the amount of discretion  
17 that the Court has, but we do agree that the Court does have  
18 discretion.

19 JUDGE BERLIN: All right. Now, from some things I  
20 read in the pretrial statements, I just want to make clear  
21 for the record -- well, one thing I want to add to the  
22 comment about the procedural question of whether you can  
23 raise summary judgment motions on this expedited process, I  
24 just want to add this. Should it be litigated on appeal --  
25 not that -- I mean, you would still have to reach the merits

1 of it. But I also think it's inappropriate to allow summary  
2 proceedings when discovery is not permitted. We routinely  
3 delay or deny motions for summary judgment for the moving  
4 party should that they need additional discovery in order to  
5 demonstrate a dispute.

6 And when we have a process that is not only very  
7 short, but does not permit depositions at all, except by  
8 permission of the ALJ, and does not allow for production of  
9 documents -- or interrogatories -- it's all the more reason  
10 why I should not be inferring that summary judgment is a  
11 procedure that's allowed, but, instead, should be inferring  
12 the other.

13 But having said that, when I read the pretrials, I  
14 just want to be clear about this. The summary judgment  
15 motion was denied. It was denied because I held that motions  
16 of that sort cannot be heard under the expedited procedure.

17 I also in Dicta, explained that I would have denied  
18 it, even if I reached the merits. But what I was addressing  
19 in -- as I did that -- was the case in the state that it was  
20 at on the record on summary judgment and without the benefit  
21 of any argument any party might raise at the hearing or in a  
22 closing brief filed after the hearing.

23 So just to be certain you understand, the summary  
24 judgment was denied, nothing has been decided in this except  
25 that the summary judgment should be denied. So if you have

1 some evidence you want to put on or something you want to  
2 prove, do not assume you've already proved it.

3 I think, you know, I think some of the repeating  
4 comments in the prehearing statements that both sides  
5 understand that, but I just want to make it clear for the  
6 record that whatever burden is yours, you have that burden  
7 still. And whatever proof is needed, you have nothing on the  
8 record so far, you must put it on the record at the hearing.

9 Any questions about that?

10 MS. SWEEN: Not from Google, Your Honor.

11 MR. PILOTIN: None from OFCCP, Your Honor.

12 We do have a couple of clarifications on the state  
13 of the record at this point, Your Honor, if I may?

14 JUDGE BERLIN: Yes.

15 MR. PILOTIN: With respect to the stipulated facts,  
16 those are part of the record without further evidence needed  
17 to be submitted, correct?

18 JUDGE BERLIN: Yes. Let me just say right now, I  
19 accept the stipulations of the parties, which are numbered 1  
20 through 32. I'm going to identify the two documents that  
21 recite the stipulations, respectively as ALJ Exhibit 1 and  
22 ALJ Exhibit 2, which, unless there's an objection, I'm going  
23 to admit both of those into the record.

24 MS. SWEEN: No objection, Your Honor.

25 JUDGE BERLIN: So the stipulations are admitted and

1 those are on the record at this point.

2 MR. PILOTIN: Thank you, Your Honor.

3 The only other item that we had was we did receive  
4 responses to request for admission from Google -- responses  
5 to OFCCP's first set. We received those yesterday.

6 We did not identify them on the exhibit list,  
7 because we hadn't received them yet and I just wanted to see  
8 what would be the best way to put those into the record for  
9 the Court.

10 JUDGE BERLIN: Ms. Sween, any thoughts on that?

11 MS. SWEEN: To the extent that they feel that they  
12 need them, they can submit an amended exhibit list, I  
13 suppose.

14 JUDGE BERLIN: All right. Mr. Pilotin, so if you  
15 want to amend your exhibit list, you can add that as an  
16 exhibit and then just submit it with the rest of your  
17 exhibits on Friday morning.

18 MR. PILOTIN: Understood, Your Honor.

19 With respect to this RFA -- this set of responses,  
20 as well, we don't intend to proffer -- you know, offer them  
21 through a witness. And would it be best to -- you know, I  
22 don't want to ask counsel about this, but just to submit it  
23 and, like the Joint Exhibits, have it be admitted into  
24 evidence?

25 MS. SWEEN: Well, Your Honor, the problem is the

1 RFAs contain objections. So I don't know that it's proper to  
2 admit it into evidence.

3 JUDGE BERLIN: Did you -- anything that's objected  
4 to, Mr. Pilotin, I'm going to not -- I won't consider unless  
5 we discuss it at the hearing. So, I guess, what we should do  
6 is, you know, you can offer the response to request for  
7 admission as an exhibit and then at the hearing, identify  
8 which responses you would like me to consider as evidence.  
9 Maybe you want me to consider all of them, but maybe only  
10 some of them. And then for those that you want to be  
11 considered as evidence, if there is an objection, we'll go  
12 over the objections one-by-one and I'll rule on them.

13 MR. PILOTIN: Understood, Your Honor, we will do  
14 that.

15 JUDGE BERLIN: All right. I do want to understand,  
16 since, you know, I sat at the Eleventh Circuit EEO case when  
17 I discussed undue burden on summary judgment, I just want to  
18 be sure that both sides agree that there is no Ninth Circuit  
19 authority and no ARB authority addressing what amounts to  
20 undue burden in the context of an OFCCP pay proceeding of  
21 this kind.

22 Has anyone found any Ninth Circuit or ARB  
23 authority?

24 MS. SWEEN: We have not, Your Honor.

25 JUDGE BERLIN: Mr. Pilotin?

1 MR. PILOTIN: We have not, either, Your Honor.  
2 There DC Circuit authority on this point and the only Ninth  
3 Circuit related to this point is that the Federal Rules of  
4 Civil Procedure -- those analyses don't apply to  
5 administrative subpoena proceedings.

6 JUDGE BERLIN: And is that on an OFCCP case?

7 MR. PILOTIN: That is not an OFCCP case, Your  
8 Honor, it's just -- because there aren't administrative  
9 subpoenas that are issued. It's just the analog that we've  
10 been discussing in terms of administrative subpoena  
11 proceedings being relevant -- or that analysis being relevant  
12 here.

13 JUDGE BERLIN: And that's the case you cited in  
14 your pretrial?

15 MR. PILOTIN: That is correct, Your Honor.

16 JUDGE BERLIN: Okay. I'm assuming that Ninth  
17 Circuit law is controlling in this case. Does anyone have a  
18 different view on that?

19 MR. PILOTIN: OFCCP takes the position, Your Honor,  
20 that both the Ninth Circuit and the DC Circuit are  
21 controlling, because the -- to the extent that they're not  
22 inconsistent. Only because venues for an appeal in this case  
23 coming out of the ARB, if it were to go to District Court, it  
24 would be filed in either the District of DC or here in the  
25 Northern District of California.

1 JUDGE BERLIN: Ms. Sween?

2 MS. SWEEN: I will start with the premise that  
3 Ninth Circuit law definitely controls. And to the extent  
4 that an appeal is filed in the DC Court, I think -- I don't  
5 want to speculate and I'm sure Mr. Pilotin probably has a  
6 little bit more knowledge on this than I do. However, I  
7 think from a venue perspective, that's probably accurate.

8 JUDGE BERLIN: All right. Well, I have cases  
9 reviewed by the ARB all the time and the fact that it was  
10 reviewed by the ARB does not confer jurisdiction on the DC  
11 Circuit in any of the other cases. But I don't know whether  
12 there's some different rule that applies to OFCCP and  
13 although some of our statutes have been amended, there were  
14 statute like the Surface Transportation Assistance Act, where  
15 ALJs used to make only recommended decisions that had to be  
16 approved by the ARB, and still the jurisdiction for appeals  
17 to the Federal Courts were not to the DC Circuit unless the  
18 case was decided and arose out of Washington, D.C.

19 And cases, for example, coming out of Denver were  
20 reviewed in the Tenth Circuit. Cases coming out of San  
21 Francisco were reviewed in the Ninth. And so I don't know  
22 about this.

23 Mr. Pilotin, do you actually have authority that a  
24 review of my decision would ultimately be something where  
25 OFCCP could chose which circuit it wanted to file in?

1 MR. PILOTIN: On that point, Your Honor -- and we'd  
2 be happy to submit a short brief on this topic. And the  
3 issue would be here that for at least the OFCCP, as in the  
4 United States case, that an appeal would be from the ARB  
5 would be an appeal under the Administrative Procedure Act.  
6 It wouldn't be under another statute like the other statutes  
7 that you've mentioned.

8 And venue for the APA would be either here --  
9 either in the District Court here, in the Northern District  
10 of California, or in the District of DC. And then,  
11 ultimately, go up from there in the event that there's  
12 further appeals.

13 MS. SWEEN: Your Honor, can I be heard on this?

14 JUDGE BERLIN: Yes.

15 MS. SWEEN: I think it's a little bit premature,  
16 because certainly if there is an appeal, you know -- if OFCCP  
17 were to lose -- I mean, sorry, if Google were to lose and if  
18 Google were to elect to appeal, we would certainly get choice  
19 of whether to file it here or whether to file it in DC. And,  
20 so, I think speculating about whether or not DC Circuit law  
21 would apply is premature, because certainly we would have the  
22 opportunity to file it in Northern District.

23 JUDGE BERLIN: Right. I take your point, but I'm  
24 still left having to choose which circuit is controlling.

25 Given that there's only very limited appellate case

1 decision on this precise question, I'm not sure I'm going to  
2 have an issue about which circuit to follow, because I don't  
3 know that I'll have anything out of either the DC Circuit or  
4 the Ninth. But if -- most of our cases are appealed directly  
5 to the Circuit Courts, but that's by the individual statute  
6 involved.

7 So under the Administrative Procedures Act, you  
8 know, an appeal to the District Court might well be the  
9 correct path. In which case, if there was any decision on a  
10 case like this out of -- I'd still have to know to look to  
11 Northern California cases or District DC cases. So, I  
12 understand what you're saying. We might not know yet who  
13 will be reviewing it, but I still have to know where the  
14 controlling law is.

15 You know, maybe it won't make a difference in the  
16 end. But on the subject of the burden, the undue burden or  
17 unreasonable burden of the Defendant, is anyone aware of a  
18 Northern District California case?

19 MR. PILOTIN: Your Honor, with that, I -- off the  
20 top of my head, I'm not aware of a Northern District case.

21 As Google has suggested or indicated that they  
22 would have the appeal in either in DC or here in the Northern  
23 District. Which is why we cited to both in our briefing.  
24 The DC Circuit does have quite a bit of case law on this  
25 point and there's nothing in the Ninth Circuit that's

1 inconsistent.

2 As to the Northern District having any sort of  
3 persuasive authority on this, that's something we can brief  
4 if the Court would want that briefing.

5 JUDGE BERLIN: Okay. But we are aware -- I mean  
6 there is the DC -- the District Court DC case that I've  
7 discussed already and the parties discussed on summary  
8 judgment, so I'm aware of that. And if appeal is to the  
9 District Court in these cases, unlike most of our cases, and  
10 if that could be an appeal to the District Court in DC, I  
11 guess it would be helpful to know that.

12 So, let's -- I would appreciate briefs from both  
13 sides on this subject, if possible. I'll set a deadline of  
14 Wednesday, a week from today, on the 12th, by 5:00, filed by  
15 fax.

16 MR. PILOTIN: And, Your Honor, just to clarify what  
17 precise question would you like the parties to answer in the  
18 brief? I just want to make sure that we hit the target that  
19 you want us to hit?

20 JUDGE BERLIN: Other than the Supreme Court, what  
21 courts have controlling authority that is precedential in  
22 this case?

23 MR. PILOTIN: Understood, Your Honor. Thank you.

24 JUDGE BERLIN: Okay. So, Mr. Pilotin, I do want to  
25 understand -- first of all, let me ask, is either party -- or

1 maybe jointly -- are you submitting the Affirmative Action  
2 Plan as an exhibit? I didn't notice that on the list.

3 MR. PILOTIN: No, Your Honor, that is not on either  
4 party's exhibit list.

5 JUDGE BERLIN: Okay. And was there some sort of  
6 imbalance that Google found when they did the Affirmative  
7 Action Plan that imposes some requirement on them to take  
8 affirmative steps or to take action aimed at certain goals  
9 and time tables?

10 MS. SWEEN: That's not a question I'd be prepared  
11 to answer at this time, Your Honor. But I can certainly get  
12 back to you on that.

13 Is there -- can you help me understand a little bit  
14 what would be helpful to the Court to understand the answer  
15 to that question?

16 JUDGE BERLIN: Well, it could be the Affirmative  
17 Action Plan that Google submitted might have found that  
18 there's no adjudicated history of discrimination at Google,  
19 that there's no industry-wide discrimination in the industry  
20 Google is in. And after doing a careful study of Google's  
21 work force, that there is -- and a study consistent with the  
22 regulation, that there is no imbalance in any of the terms  
23 and conditions of employment based on one of the  
24 characteristics that is forbidden under the Executive Order  
25 or the two statutes. In which case, I'm not sure what

1 obligations Google undertook in the Affirmative Action Plan  
2 that OFCCP is reviewing.

3 Normally, there has to be some reason to undertake  
4 affirmative action steps before a company is required to do  
5 that. So, you know, there's the non-discrimination provision  
6 in the Executive Order. So that has nothing to do with the  
7 Affirmative Action Plan. And then there's the Plan, which  
8 you must submit, but not all plans actually require the  
9 employer to take any affirmative steps aimed, for example,  
10 and eliminating or reducing imbalances in compensation that  
11 appear to be based on factors, you know, such as gender or  
12 national origin or race. So, I don't know what's in the AAP.

13 Mr. Pilotin, is this investigation based simply on  
14 the non-discrimination provision or is it also based on the  
15 AAP?

16 MR. PILOTIN: It's both, Your Honor. What this  
17 basically is an audit of whether or not Google has complied  
18 with the non-discrimination provisions and an evaluation of  
19 Google's AAP. And it's -- I guess you could say, yes, its  
20 progress or whether or not it's fulfilling the terms of its  
21 AAP. So it is both, and that's spelled out in the regs on  
22 compliance evaluations under Section 16.120(a) under Title 41  
23 of the CFR.

24 JUDGE BERLIN: Well, I understand it can certainly  
25 concern both. But if the Affirmative Action Plan doesn't

1 require Google to do anything, then the evaluation would have  
2 to be focused mostly on does the Affirmative Action Plan need  
3 to be revised, not are they failing to take steps aimed at  
4 reducing an imbalance that's discriminatory. Right?

5 MR. PILOTIN: My understanding, Your Honor, is that  
6 these are two separate issues -- two different steps and two  
7 different analyses as part of the compliance evaluation.

8 One question is: Is compliance with the non-  
9 discrimination provisions? And another analysis is Google's  
10 compliance with its own AAP?

11 JUDGE BERLIN: Right. And that's what I'm asking.  
12 Is this case -- is OFCCP evaluating and reviewing both of  
13 those in this particular case? I mean, obviously, they're  
14 authorized to review them both. But in this particular case,  
15 are they evaluating or reviewing both of those or just the  
16 non-discrimination provision?

17 MR. PILOTIN: Understood, Your Honor. I think this  
18 gets to your question. The request at issue in this case  
19 primarily goes to a non-discrimination analysis that OFCCP is  
20 undertaking. And basically what the analysis is whether or  
21 not Google pays its employees in a non-discriminatory  
22 fashion? So it is going to that broader issue of is Google  
23 complying with its non-discrimination obligation?

24 JUDGE BERLIN: Okay. I appreciate that very much.  
25 The only issue that I have is your use of the word

1 "primarily." So I don't want you to wiggle out of this. Is  
2 that what OFCCP is doing? Because I have to decide whether  
3 the materials sought are relevant to what OFCCP is doing.  
4 And so I'm asking you what is it doing? And if it is doing a  
5 compliance review on the non-discrimination, but not the  
6 Affirmative Action Plan, then I don't need to look at the  
7 Affirmative Action Plan at all. And no one seems to be  
8 offering it as an exhibit.

9 But if it's doing a compliance review that relates  
10 to the Affirmative Action Plan and, for example, the  
11 Affirmative Action Plan has no requirements related to  
12 compensation, I would want to know those. So, can you take  
13 the word "primarily" out of your statement and be satisfied  
14 with that? Or do you need to do something else?

15 MR. PILOTIN: Unfortunately, I can't take it out,  
16 Your Honor, because the Affirmative Action Plan and the non-  
17 discrimination do go hand-in-hand in terms of, yeah, the Plan  
18 does provide that there won't be any sort of discrimination  
19 along the lines of -- you know, of what is impermissible.  
20 So, they do go hand-in-hand.

21 But the issue here is is the issue of whether or  
22 not Google discriminates or not -- whether Google  
23 discriminates in its compensation practices, which goes to  
24 its non-discrimination obligation. However, since the two do  
25 go hand-in-hand, I can't wholly preclude the relevance of the

1 AAP and say that, you know, the materials that are being  
2 requested as part of this upcoming hearing isn't relevant to  
3 the AAP at all.

4 That said, as we know, the AAP isn't part of the  
5 exhibit list and, you know, our intent is to make our case  
6 without it.

7 JUDGE BERLIN: All right. Well, since you're  
8 making your case without the -- and putting on the record the  
9 Affirmative Action Plan, I just want you to appreciate that  
10 almost certainly, I will look to see whether the information  
11 that OFCCP is requesting is something relevant to a  
12 compliance review of the Affirmative Action Plan.  
13 Understood?

14 MR. PILOTIN: I understand your guidance, Your  
15 Honor.

16 JUDGE BERLIN: Well, it's not guidance. It's a  
17 ruling. If you don't put on any evidence of what the  
18 Affirmative Action Plan requires, I will not find that the  
19 requested information relates to the Affirmative Action Plan.

20 MR. PILOTIN: Understood, Your Honor.

21 JUDGE BERLIN: Okay. All right.

22 So, during the -- on the summary judgment, Google  
23 asserted that they had already asserted a million dollars --  
24 or, I'm sorry, that it would cost a million dollars to  
25 summarize the 54,000 job interviews.

1 Ms. Sween, is that referring to a past expenditure?  
2 Because I'm not seeing what in OFCCP's request would require  
3 Google to summarize job interviews.

4 MS. SWEEN: So, to back up just a little bit, the  
5 total -- the total cost to date is somewhere around a  
6 \$500,000 figure.

7 JUDGE BERLIN: Okay.

8 MS. SWEEN: The additional spend is what we  
9 anticipate Google needing to spend in order to extract the  
10 information from the interview notes that the OFCCP has asked  
11 us to provide and summarize that information. And, you know,  
12 without getting too far ahead of it, Your Honor, just to give  
13 you some context is responding to the OFCCP to date, Google  
14 did -- was required to actually build certain tools, because  
15 the platform that they have was not able to extract the  
16 information that OFCCP was requesting.

17 So a lot of the bulk of the cost is around the  
18 engineering of having to re-tool the platforms and come up  
19 with different data retrieval systems.

20 So we don't know right now how much it would cost  
21 to continue to go down this road, but experience tells us it  
22 has already cost approximately \$500,000, total. I'm not  
23 saying that that's what the engineering cost, but that's the  
24 total cost. So that's our best estimate of what it would  
25 cost should we need to create additional tools, collect the

1 data, review the data, redact the data, and produce the data.

2 JUDGE BERLIN: Okay. All right.

3 I actually have, I assume, several things left  
4 here, but I am approaching an end to this. And I do have  
5 some questions.

6 So, on the request for contact information, I keep  
7 seeing reference to "name, address, telephone, email, and  
8 other contact information." What is the "other contact  
9 information that's sought beyond "name, address, telephone,  
10 and email"? Mr. Pilotin?

11 MR. PILOTIN: We would be satisfied with those,  
12 Your Honor, the personal email address, the name and phone  
13 number and address would be fine.

14 JUDGE BERLIN: Okay. I also noted in OFCCP's  
15 pretrial that they included among the data points other  
16 factors Google uses for compensation, kind of a note to  
17 Google, in case they wanted to submit something voluntarily.  
18 But I don't know whether Google appreciates that or not.  
19 But, in any event, since it appears to be nothing OFCCP is  
20 actually requesting, will OFCCP withdraw that request?

21 MR. PILOTIN: Yes, Your Honor. I mean, you  
22 characterized that absolutely correctly.

23 JUDGE BERLIN: Okay. One of the things OFCCP wants  
24 to establish is Google's wherewithal to bear the burden of  
25 producing all of the materials that OFCCP requests and OFCCP

1 is going to submit an SEC Form 10K, so that would seem to  
2 have quite a lot of information on it.

3 It seems like OFCCP also wants to offer some  
4 testimony explaining the 10K or explaining about what  
5 Google's profits are or -- I don't know what. But is that  
6 really needed if we have the 10K?

7 MR. PILOTIN: Yes, Your Honor. What we would want  
8 to do -- and we don't anticipate it being long testimony, but  
9 we would need to walk to the 10K to, you know, focus on the  
10 relevant metrics that are on the 10K that bear on the undue  
11 analysis and just to discuss generally the -- you know, from  
12 OFCCP's perspective, in light of the case law from the DC  
13 Circuit, whether or not Google does have the undue burden and  
14 meets the legal test to show that.

15 JUDGE BERLIN: Okay. I think, you know, OFCCP has  
16 expressed repeatedly an interest in getting the hearing  
17 concluded on Friday. And understood when we set the hearing  
18 to Friday to accommodate OFCCP's witness, that if it doesn't  
19 end on Friday, there's going to be an adjournment that would  
20 be some length of time. We're not going to resume on Monday.

21 So, if the 10K will cover the issue and if in your  
22 closing argument you can cite to the things on the 10K that  
23 you want me to consider, I would give some real thought to  
24 that, because the more you do to streamline the hearing and  
25 not duplicate something that you can argue without putting on

1 an expert who will then have to be cross-examined, you know,  
2 I'm not going to exclude the witness. I leave that to OFCCP,  
3 but I don't really know once you've established -- once the  
4 10K is admitted and you can argue about what it shows, I  
5 would think that would be enough. But you're more familiar  
6 with it than I am, and if you elicit it, I'm not going to  
7 exclude it.

8 So, a word to the wise.

9 MR. PILOTIN: Understood, Your Honor. Thank you.

10 JUDGE BERLIN: I'll probably allow on an expedited  
11 basis briefing on the subject. It shouldn't come as a  
12 surprise to anyone that it's an issue.

13 As far as the exhibits are concerned, I will not  
14 allow a blanket order sealing all of the exhibits. Some  
15 exhibits, we can seal in their entirety, maybe. I mean if  
16 there's an adequate showing. Others, we might seal the  
17 exhibits and allow the introduction of a redacted version,  
18 because we would have to identify what must be redacted. But  
19 some exhibits cannot be either redacted or sealed. So, it's  
20 not going to be that simple.

21 I will tell you we have been receiving quite a lot  
22 of FOIA requests about the case. We have requests for the  
23 entire case file. So, as far as I'm aware, we have not yet  
24 responded to any of those requests. And I am inclined until  
25 the issue can be resolved to seal the record, but only

1 temporarily until it can be decided kept sealed and what  
2 should not be kept sealed.

3 And having said that, my order does not prevent the  
4 Department from materials requested under the Freedom of  
5 Information Act. So, a FOIA officer will review the matter  
6 to decide whether it comes within any of the exceptions to  
7 FOIA.

8 So, ultimately, once the decision becomes final and  
9 all of the appeals are concluded, I might be willing to  
10 entertain a motion to withdraw from the record certain  
11 unredacted exhibits, but I can't do that, obviously, until  
12 all of the appeals are exhausted, because anyone doing an  
13 appeal has to have access to a full record. So this is  
14 really a very difficult thing, because my authority is  
15 limited, in that this is an administrative agency and I am a  
16 ALJ, but I cannot prevent the Department from responding to a  
17 FOIA request.

18 Now, having said all of that, you know, FOIA sets  
19 a deadline for producing deadlines and we try diligently to  
20 comply with those requirements, but we have to handle them in  
21 the ordinary course. And, unfortunately, one of our Judges  
22 recently retired and there's a hiring freeze. So back logs  
23 are developing in this office and I must say I have very  
24 limited time to respond to FOIA requests. So, I'll, of  
25 course, do my best to respond to them timely, but it could

1 take a while.

2 MS. SWEEN: So, Your Honor, just for clarification,  
3 did you --

4 JUDGE BERLIN: You can file a motion -- hopefully a  
5 joint motion for an agreed protective order and I'll review  
6 that. You can do that at any time. If you cannot reach an  
7 agreement, then Google should file a motion on its own and I  
8 will establish a briefing schedule for an opposition. It  
9 will be a very short schedule. So, hopefully, your  
10 discussions in advance will isolate whatever issues there are  
11 and Mr. Pilotin will be in a position to respond quickly.

12 Now, the hearing on Friday is a public hearing.  
13 So, we might have to deal with anything that's confidential  
14 at the time of the hearing. If Google contends that  
15 something is a trade secret, you know, I'll have to deal with  
16 that at the time. Hopefully, we won't need to actually  
17 discuss on the record the content of anything that might be a  
18 trade secret. You know, if I have a copy of it in front of  
19 me, I can read it, and maybe we can find a way to address it  
20 if the public is present.

21 The case has received coverage, but most of it has  
22 been in labor law publications. We've had some other  
23 inquiries besides this, but I don't know whether we can  
24 anticipate any press will be at the hearing or not.

25 MR. PILOTIN: Your Honor, on this point, I mean we

1 haven't heard -- this is the first time we're hearing of this  
2 being an issue. So, we will -- you know, I'm not sure what  
3 the briefing schedule is going to look like, but we are, you  
4 know, preparing for the hearing at this point and probably  
5 can't accommodate filing another brief on this point,  
6 specifically.

7 We -- you know, in terms of the Agency's view  
8 generally, I mean we, typically, in here don't agree to  
9 protective orders, only as the Court noted that we're bound  
10 by FOIA and the Privacy Act and those are our guiding  
11 principles at this point.

12 JUDGE BERLIN: Well, it's good that you have  
13 principles and you're going to have to apply them to this  
14 case, because if that's all you say, I'm going to be inclined  
15 to give Google whatever they want. I will review it. I'm  
16 aware of the law in this area. The public has a right to  
17 know. So, I am not going to give Google carte blanche.

18 But for the Solicitor of Labor to say, "We take no  
19 position on whether the records of these hearings are public  
20 and to what extent," you know, if you take that position I  
21 will certainly report that in whatever ruling I make. And I  
22 will give your views the weight they're entitled to.

23 MR. PILOTIN: Understood, Your Honor. And we do  
24 have a position that these are open, public hearings, as  
25 well. But we'll respond in a motion or whatever Google sends

1 us.

2 JUDGE BERLIN: All right. I'll look forward to  
3 that.

4 Anything else for the pretrial today, besides -- I  
5 do have one more thing I want to talk about. So is there  
6 anything else from the parties?

7 MS. SWEEN: Your Honor, I want to be mindful and  
8 respectful of Your Honor's time during the hearing process.  
9 Again, I don't know if this is the appropriate place to raise  
10 it or not, so I leave that to you. We -- Google anticipates  
11 that OFCCP is going to be relying extensively on the  
12 deliberative process privilege, as well as the investigatory  
13 files privilege. And I'm questioning whether or not it makes  
14 sense for us to have a discussion about the Court's position  
15 on that and whether OFCCP has made the requisite showing in  
16 order to rely on that privilege now, so that we aren't  
17 dealing with it during the hearing.

18 JUDGE BERLIN: All right. You have addressed that  
19 in your briefs, both of you. Is there anything more than you  
20 wanted to add to what you put in your briefs on this subject?

21 MR. PILOTIN: Not from OFCCP, Your Honor.

22 JUDGE BERLIN: Ms. Sween?

23 MS. SWEEN: No. It's everything we would like the  
24 Court to know is in our briefs.

25 JUDGE BERLIN: All right. Let me explain how I

1 look at this. I try to give you an indication of this in the  
2 summary judgment, which is one of the reasons I bother to  
3 talk about it in the summary judgment.

4 I view my role in determining whether the  
5 information sought is within the power of OFCCP and is  
6 relevant and is not unduly -- well, let's leave that part out  
7 -- and is relevant as being narrowly circumscribed.

8 I believe that I must defer to OFCCP unless it's  
9 something sought that plainly appears to have no bearing on  
10 anything that OFCCP is committed to investigate as part of a  
11 compliance review. And I have looked at the list of data  
12 points that they have asked for. And based on my experience  
13 with cases, I don't really have any difficulty seeing  
14 developments of the data points they are asking for.

15 With respect to those data points, I'm not going to  
16 just flat out foreclose any questions. But if there are  
17 objections based on relevance, I'm going to have a tendency  
18 to sustain those objections because I don't think I should  
19 scrutinize beyond whether on its face the requests are -- can  
20 be said to be plainly outside what is relevant to the  
21 permitted investigation.

22 So, I don't know how much into the deliberative  
23 process we're going to get. I do not believe I have the  
24 authority to order OFCCP to give interim findings to Google  
25 to justify either to Google or to my office, the Judge, why

1 they want these. And I find that the motivation for their  
2 inquiries is not the issue. The issue is whether it is  
3 within their authority, whether it's relevant, and whether it  
4 creates an unreasonable burden on the Employer.

5 So, I'm not going to be inclined to allow evidence  
6 going to such questions as, "Why do you want something?"

7 However, if a request appears to be duplicative of  
8 another request or if Google wants to offer evidence to show  
9 why something is plainly useless, which, you know, for  
10 example, the statistical expert is going to do that, I will  
11 certainly listen.

12 But, then, it might be that OFCCP will conclude  
13 that it needs to say something more about why it wants  
14 something in order to overcome the evidence that is being  
15 offered. If OFCCP does that and if they open the door, then  
16 I'll allow questioning on it.

17 But I hope this is helpful. I do not envision this  
18 as a hearing in which I second guess the deliberations of  
19 interim views of OFCCP. It's not about their motivation,  
20 it's about what exactly are they asking for? Is it within  
21 their authority? And there doesn't seem to be much question  
22 about that. Is it relevant? And there is some question  
23 about that. And does it create an undue burden? And there's  
24 some question about that, as well.

25 So does that answer the question?

1 MS. SWEEN: I think so, Your Honor. And Google  
2 does not intend to ask any questions derived at motivation.  
3 Our questions are going to be focused more on what  
4 information these witnesses have and understand and from that  
5 information, do they understand that what they're asking for  
6 is not helpful to the analysis -- or not helpful, but it  
7 wouldn't shed any more light on the analysis.

8 So, from the get go, we haven't been interested in  
9 the motivation. The reason why we are asking, "Can you let  
10 us know why," is not to get at their deliberative process,  
11 but so that we can help explain to them that what they're  
12 asking for is not pertinent to what they need and, therefore,  
13 is unduly burdensome.

14 And I understand I'm pre-arguing the case, and I  
15 don't mean to do that. But just to answer your question, our  
16 questions are not going to be aimed at the why, except to the  
17 extent that it would help the Court understand that these  
18 individuals don't understand, still, that what they are  
19 asking for sheds no light on their ultimate goal.

20 JUDGE BERLIN: Well, if you put on an expert who  
21 says that what they're asking for will not be helpful to them  
22 and they put on no evidence to the contrary, that's what the  
23 record will look like. So, you know, I'm not telling you  
24 what results that will achieve, but that's what the record  
25 will look like.

1 MS. SWEEN: And, Your Honor, I just want to mention  
2 -- because I don't know if Your Honor is aware of the new  
3 McClain versus EEOC case that came out of the Supreme Court  
4 on Monday?

5 JUDGE BERLIN: I received a copy of that and I  
6 appreciate that it was filed with me. So, I've not reviewed  
7 it and I will review it. But thank you for alerting me.

8 MS. SWEEN: All right. Thank you, Your Honor.

9 JUDGE BERLIN: All right. So, you know, in talking  
10 about this a little more, I don't want to aim the parties at  
11 anything in particular, but the summary judgment should be  
12 something of a roadmap of some of the concerns I have, such  
13 as why go back to 1998, which is one of the defense  
14 arguments, and another question was some sense of why we need  
15 the second snapshot, plus the history of all of the employees  
16 shown in the first snapshot.

17 So, you know, the second snapshot has more criteria  
18 addressed, then the compensation history and the rest of the  
19 employment history that OFCCP is seeking based on the first  
20 snapshot. But do we really need both the histories and two  
21 snapshots? So that's a question that I have.

22 And now that we've narrowed down what the contact  
23 information is, I think that's helpful.

24 Those were some of the considerations. I've  
25 mentioned other things on the summary judgment and, you know,

1 you're free to raise whatever issues you like. But, I don't  
2 see, really, where any of that necessarily would get into  
3 OFCCP's deliberations for their interim conclusions or  
4 anything like that.

5 So, we'll just -- I think we're going to have to  
6 see how it plays out. But, you know, by and large, I'm  
7 looking at these lists -- this list of categories and I kind  
8 of see why they all make sense. So I'll be looking for some  
9 sort of indication of why I wouldn't find that.

10 So, let me turn to my last point, having made that  
11 additional statement, and in every prehearing conference I  
12 ask the parties about settling their dispute. Obviously, the  
13 parties here have both made significant efforts to resolve  
14 disagreement -- this disagreement.

15 Google has offered to produce some of the requested  
16 information. I gather that OFCCP has made some adjustments,  
17 I don't really know. And, of course, my views might be in  
18 the end, they might have very little to do with what the  
19 ultimate order will be, to kind of have all of the various  
20 appellate bodies say.

21 But I think I will get some deference on review,  
22 we'll see. And you have some of my thoughts on some of these  
23 things. And I think it might be useful, given some of the  
24 questions that I've asked, what I've wrote on summary  
25 judgments and the comments I've made today, for you to take

1 one more look at whether this is something you can't resolve  
2 voluntarily.

3 You know, I perceive good faith efforts on the  
4 parts of both parties -- maybe you don't agree with me. But  
5 that's from my very limited exposure, how it looks to me.  
6 And I encourage you to go over these, you know, and see if  
7 something can be resolved and let me know.

8 So, I don't think I will ask you any questions  
9 about that and I don't think I'm going to order anything, but  
10 I do encourage you -- even though you're busy preparing -- to  
11 have at least one last conversation.

12 Of course, you guys can settle at any time, even  
13 after you get my orders. So, that's up to you.

14 All right. Anything else for today?

15 MS. SWEEN: Nothing from Google, Your Honor.  
16 You've been very helpful. Thank you.

17 MR. PILOTIN: Nothing from OFCCP, Your Honor. And  
18 thank you, as well.

19 JUDGE BERLIN: All right. I thank you all and  
20 unless I hear that it has resolved, I'll see everyone on  
21 Friday morning, 9:00, for the hearing. And, Ms. Sween, if  
22 you need access to the courtroom to set up anything, please  
23 just let us know as soon as you can.

24 MS. SWEEN: Thank you very much, Your Honor.

25 JUDGE BERLIN: All right. Thank you all.

Off the record.

(Whereupon, the proceedings were concluded at 11:50  
o'clock a.m.)

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REPORTER'S CERTIFICATE

TITLE: Office of Federal Contract Compliance Programs, et  
al., vs. Google, Inc.


CASE NUMBER: 2017-OFC-00004

OWCP NUMBER: N/A

DATE: April 5, 2017

LOCATION: SAN FRANCISCO, CALIFORNIA

This is to certify that the attached proceedings  
before the United States Department of Labor, were held  
according to the record and that this is the original,  
complete, true and accurate transcript which has been  
compared to the reporting or recording accomplished at the  
hearing.

  
SIGNATURE OF REPORTER

  
DATE